

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 97-0319  
Sales and Use Tax  
For The Tax Periods: 1994, 1995, 1996**

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**ISSUES**

**I. Sales/Use Tax – Manufacturing Exemption**

**Authority:** IC 16-41-12-2, IC 29-2-16-1, IC 6-2.5-5-3, 45 IAC 2.2-5-8, *Mechanic's Laundry & Supply, Inc. v. Dept. of State Revenue*, 650 N.E.2d 1228 (1995), *Indiana Dept. of State Revenue v. Cave Stone*, 457 N.E.2d 520 (Ind. 1983), *Harlan Sprague Dawley v. Indiana Dept. of State Revenue*, 605 N.E.2d 1222 (Ind. Tax 1992), and *Mid-America Energy Resources, Inc. v. Indiana Dept. of State Revenue*, No. 49T10-9504-TA-00038, May 22, 1997, (Ind. Tax 1997).

The Taxpayer protests the assessment of sales/use tax on equipment and supplies used during the plasmapheresis process.

**II. Sales/Use Tax – Public Transportation Exemption**

**Authority:** 45 IAC 2.2-5-63.

The Taxpayer protests the assessment of sales/use tax on shipping charges.

**STATEMENT OF FACTS**

The Taxpayer is an out-of-state corporation that manufactures and distributes human blood plasma and plasma-derivative products. The Taxpayer manufactures a variety of pharmaceuticals including: Immune Globulin, for the treatment of immunologic disorders; Coagulation Factors, for the treatment of hemophilia; and Plasma Expanders, used in

maintaining and restoring blood volume in surgical procedures and other treatment protocols. At the plasmapheresis center, which is located in Indiana, whole blood is withdrawn from human donors and mixed with sodium citrate and is separated by a centrifuge into source plasma and red blood cells. The red blood cells are returned to the donor. The source plasma is tested, and stored in a refrigerator. The plasma is then transferred by refrigerated truck to a processing facility located out-of-state with a small portion going to a separate out-of-state laboratory for further testing.

I. **Sales/Use Tax: Manufacturing Exemption**

**DISCUSSION**

The Taxpayer protests the assessment of sales/use tax on certain pieces of equipment and supplies used during the plasma extraction process. The equipment includes: a walk in freezer, which is used to store the extracted plasma until its shipment to the processing facility; Poly oil, used for the compressor inside the freezer; and IVAC machines, used to check vital signs, routine of pulse, blood pressure, and temperature. IC 6-2.5-5-3 and 45 IAC 2.2-5-8 provide that manufacturing machinery, tools, and equipment are exempt for sales/use tax if the person acquiring the property acquires it for the direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining or finishing of other tangible personal property.

The Taxpayer contends that they do not come within the scope of the statutory definition of a blood bank, storage facility, or hospital. A blood bank is defined by IC 16-41-12-2 by reference to IC 29-2-16-1. That definition states: “[b]ank or storage facility’ means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.” This definition must be read in conjunction with IC 16-41-12-11(a)(2), which states that the bank or storage facility must also inject, transfuse, or transplant human tissue. The Taxpayer does not sell a product for direct transfusion.

The Taxpayer must show that they are engaged in “production.” (See, *Mechanic’s Laundry & Supply, Inc. v. Dept. of State Revenue*, 650 N.E.2d 1228 (1995)). A variety of activities have been found to be considered “production” under IC 6-2.5-5-3. A triad of cases, *Indiana Dept. of State Revenue v. Cave Stone*, 457 N.E.2d 520 (Ind. 1983), *Harlan Sprague Dawley v. Indiana Dept. of State Revenue*, 605 N.E.2d 1222 (Ind. Tax 1992), and *Mid-America Energy Resources, Inc. v. Indiana Dept. of State Revenue*, No. 49T10-9504-TA-00038, May 22, 1997, (Ind. Tax 1997), must be analyzed to determine whether or not the Taxpayer meets the threshold question as to whether the Taxpayer is engaged in production.

In *Cave Stone*, the Indiana Supreme Court acknowledged the “essential and integral” test as a means for determining whether or not the double direct test is met. The Court recognized that the whole production process must be analyzed to determine whether the equipment used in production had an immediate effect on the completed tangible personal property. In *Harlan Sprague Dawley* the Tax Court ruled the “production” occurred where rats were bred in a sterile environment to create offspring with particularized, desired characteristics. In rejecting the Department’s position that there was no processing because no new product distinct from its input emerged, the Tax Court ruled that the Taxpayer did create something new, namely, viral

free rats, which were a valuable good for research laboratories. The Tax Court also pointed out that “production is viewed expansively as all activity directed to increasing the number of scarce economic goods.” And finally, in *Mid-America Energy*, the Tax Court similarly found that the Taxpayer’s cooling of water constituted production of other tangible personal property. The cooling process created a significant change in the properties at the molecular level.

Here, the process is not considered a therapeutic operation for the donor, but rather, the Taxpayer is producing source plasma, which is shipped to an out-of-state processing facility for further production. The Taxpayer is considered a manufacturer since the source plasma has many different qualities from whole blood. Thus, the Taxpayer’s equipment may be exempt. The Department views the production process to begin with the plasma donation and segregation. The refrigerator is required to cool and maintain the plasma until it can be shipped out-of-state for further processing and should be exempt. The Poly oil is exempt because it is considered a component part of the refrigerator, which is required to keep the compressor operational. However, the donor beds and IVAC machines are not directly used for the extraction of the plasma and are not considered “essential and integral” in the production process and is therefore not exempt.

### **FINDING**

The Taxpayer’s protest is sustained in part, and denied in part. The refrigerator and Poly oil are exempt. The donor beds and IVAC machines are not exempt.

## **II. Sales/Use Tax: Public Transportation Exemption**

### **DISCUSSION**

The Taxpayer was assessed sales/use tax on two invoices for the purchase of chairs. The Taxpayer was also assessed sales/use tax on the shipping charges. The Taxpayer concedes that the sales/use tax for the chairs is due but protests the assessment of tax on the shipping charges. The Taxpayer argues that the shipping charges should be exempt under 45 IAC 2.2-5-63(a) which states: “The state gross retail tax shall not apply to the sale and the use in this state of service which is directly used or directly consumed in the rendering of public transportation of persons or property.” However, this Rule does not apply to the Taxpayer since they do not render public transportation. Therefore, the protest must be denied.

### **FINDING**

The Taxpayer’s protest is respectfully denied.